IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6310 of 2003

For Approval and Signature:

HON'BLE MR.JUSTICE M.S.SHAH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

NARSHIJI NAGAJI MAJIRANA

Versus

MANGILAL AMTURAM BISHNOI

Appearance:

1. Special Civil Application No. 6310 of 2003

MR AJMAL G SOLANKI for Petitioner No. 1

NOTICE SERVED for Respondent No. 1

MS MEGHA JANI for Respondent No. 2-3

CORAM : HON'BLE MR.JUSTICE M.S.SHAH

Date of decision: 02/12/2003

ORAL JUDGEMENT

RULE. Ms Megha Jani, learned counsel for respondents No.2 and 3 waives service of Rule. As far as

respondent No.1 is concerned, since he was a truck driver and does not have any conflicting interest with respondents No.2 and 3 and the effective relief sought by the petitioner-claimant in the Motor Accident Claim Petition is against the owner and insurer of the truck in question, and since respondent No.1 was already served earlier, the Court does not think it fit to issue notice of Rule on respondent No.1 and to wait for him to appear.

In the facts and circumstances of the case, the petition is taken up for final disposal today.

2. The petitioner filed Motor Accident Claim Petition No.32 of 2003 praying for compensation on account of death of his son Mansukh Narishiji Majirana who expired in a motor vehicle accident at Gandhidham on 31.12.2002. The claim petition was filed under Sections 140 and 166 of the Motor Vehicles Act, 1988 (hereinafter referred to as "the Act"). Within a few months of the date of filing the original claim petition under Sections 140, 166 and 170 of the Act, on 7.4.2003 the petitioner filed application Exh. 9 praying that the main petition may be treated as a petition under Section 163-A of the Act instead of a petition under Sections 140, 166 and 170 of the Act. The claimant pointed out that no orders were passed either on the original claim petition or on the application for compensation under Section 140. While making the said application Exh.9, the petitioner relied on the decision of a Division Bench of this Court in Oriental Insurance Co. Ltd. vs. Chintharbhai Sibbabhai & Ors., 2003 (1) GLH 394 wherein this Court was pleased to observe as under:-

> "The Tribunal is empowered to determine the compensation which the claimants are entitled to under Section 163-A even without any application by the claimants."

3. By the impugned order dated 10.4.2003, the Motor Accident Claims Tribunal, Gandhidham Kutch has rejected the said application Exh.9 on the ground that there is no provision for converting a petition under Section 166 into a petition under Section 163-A of the Act and that no reasonable cause is shown for making the said application. The Tribunal further observed that the claim petition is filed in the year 2003 and, therefore, its conversion into a petition under Section 163-A solely for the purpose of expeditious disposal cannot be said to be a reasonable ground for granting the application.

Aggrieved by the aforesaid order, the original

claimant has approached this Court under Article 227 of the Constitution.

4. The provisions of Sections 163-A and 163-B which have come up for consideration in this petition, read as under:-

"163-A. Special provisions as to payment of compensation on structured formula basis. -

(1) Notwithstanding anything contained in this Act or in any other law for the time being in force or instrument having the force of law, the owner of the motor vehicle or the authorised insurer shall be liable to pay in the case of death or permanent disablement due to accident arising out of the use of motor vehicle, compensation, as indicated in the Second Schedule, to the legal heirs or the victim, as the case may be.

Explanation - For the purposes of this sub-section, "permanent disability" shall have the same meaning and extent as in the Workmen's Compensation Act, 1923 (8 of 1923).

(2) In any claim for compensation under sub-section (1), the claimant shall not be required to plead or establish that the death or permanent disablement in respect of which the claim has been made was due to any wrongful act or neglect or default of the owner of the vehicle or vehicles concerned or of any other person.

(3) The Central Government may, keeping in view the cost of living by notification in the Official Gazette, from time to time amend the Second Schedule.

163-B. Option to file claim in certain cases. -
Where a person is entitled to claim compensation under Section 140 and Section 163-A, he shall file the claim under either of the said sections and not under both."

(emphasis supplied)

5. The learned counsel for the petitioner submitted that since no order was passed on the claimant's application under Section 140 of the Act, the Tribunal ought to have allowed the application Exh.9 for

converting the petition under Section 166 into a petition under Section 163-A of the Act. On the other hand, the learned counsel for the respondents supported the impugned order on the following grounds:-

(i) Once the claimant has filed an application under Section 166/168 of the Act, he must be deemed to have given up his right to claim under Section 163-A of the Act because they are alternative claims.

(ii) Similarly, once the claimant has filed an application under Section 140, he must be deemed to have given up his right to claim under Section 163-A.

6. Before dealing with the first submission, it is necessary to consider the decision of the Apex Court in Oriental Insurance Co. Ltd. vs. Hansrajbhai V. Kodala, 2001 (5) SCC 175. The Apex Court referred to the legislative history and the Scheme of the Motor Vehicles Act, 1988, particularly with reference to Sections 140, 141, 162, 163-A, 163-B, 166, 167 and 168 of the Act and observed that the reason for enacting Section 163-A is to give earliest relief to the victims of the motor vehicle accidents. As per the objects and reasons, it is a new predetermined formula for payment of compensation to road accident victims on the basis of age/income, which is more liberal and rational. It is also apparent that compensation payable under Section 163-A is based on relevant criteria for determining the compensation such as annual income, age of the victim and multiplier to be applied. The purpose of Section 163-A and the Second Schedule is to avoid long-drawn litigation and delay in payment of compensation to the victim or his heirs who are in dire need of relief. If such affected claimant opts for accepting the lumpsum compensation based on structured formula, he would get relief at the earliest. It also gives vital advantage of not pleading or establishing any wrongful act or neglect or default of the owner of the offending vehicle or vehicles. This no-fault liability appears to have been introduced on the basis of the suggestion of the Law Commission to the effect that the expanding notions of social security and social justice envisage that liability to pay compensation must be "no-fault liability". However, this benefit can be availed of by the claimant only by restricting his claim on the basis of income at a slab of Rs.40,000 which is the highest slab in the Second Schedule which indicates that the legislature wanted to give benefit of no-fault liability to a certain limit.

This would clearly indicate that the Scheme is in alternative to the determination of compensation of on fault basis under the Act. The law before insertion of Section 163-A was giving limited benefit to the extent provided under Section 140 for no-fault liability and determination for compensation amount on fault liability was taking a long time. That mischief is sought to be remedied by introducing Section 163-A and the disease of delay is sought to be cured to a large extent by affording benefit to the victims on structured-formula basis. Further, if the question of determining compensation on fault liability is kept alive would result in additional litigation and complications in case claimants fail to establish liability of the owner of the defaulting vehicles. As the legislature has not provided for refund or adjustment of compensation received "under the Act" and compensation payable under Section 163-A, it would mean that the Scheme of payment of compensation under Section 163-A, is in alternative to determination of compensation under Section 168.

7. Coming to the first submission, it is true that the claimant cannot get compensation both under Section 166/168 of the Act and also under Section 163-A of the Act.

Under Section 166/168 of the Act, the claimant is entitled to claim "just" compensation from the opponents on "fault liability" principle, that is, the claimant will have to prove negligence on the part of the driver of the offending vehicle and after doing so, the claimant will have to prove his income and loss of earning capacity in case of an injured claimant or loss of dependency benefit and loss to the estate in case the claimants are heirs of the deceased victim.

Section 163-A, on the other hand, does away with the requirement of proving or even pleading negligence of the driver of the offending vehicle and as far as compensation is concerned, once the age and income of the deceased are shown, the Legislature has provided a structured formula for determination of compensation and no other evidence is required to be led and no arguments are required to be advanced about, additions to be made or the deductions to be made from the income or the multiplier to be adopted, as all the additions/deductions and multiplier to be applied are provided in the Schedule itself.

The object with which Section 163-A has been inserted and the non-obstante clause with which

sub-section (1) of Section 163-A commences clearly indicate that the Legislature did not intend to prevent the claimant from getting compensation as per the structured formula merely because in his original claim petition he had prayed for compensation on the basis of "fault liability" principle. There is no prohibition in any provision of the Motor Vehicles Act, 1988 against the claimant praying for compensation as per the structured formula after his having filed a claim petition under Section 166/168 of the Act.

8. The following decisions have already taken the above view and this Court would like to follow the same:-

8.1 In Oriental Insurance Co. Ltd. vs. Chintharbhai Sibabhai, 2003 (1) GLH 394, a Division Bench of this Court reviewed the statutory provisions and the case law on the subject and held that the Tribunal is empowered to determine the compensation which the claimants are entitled to under Section 163-A of the Act at any stage of the proceedings. However, in view of the Scheme of the Act as explained in the aforesaid decision of the Apex Court in Hansrajbhai's case (supra), the claimant has the option of invoking Section 163-A of the Act in alternative to determination of compensation under Section 168 of the Act. There is nothing in the provisions of the Act to prevent a claimant from invoking the provisions of Section 163-A of the Act after filing application for compensation under Section 166 read with Section 168 of the Act.

8.2 In Oriental Insurance Co. Ltd. vs. Vinodkumar Jaysukhbhai Devba Gate & Ors. (First Appeal No.3110 of 2001 decided on 30.8.2001), a Division Bench this Court held that where an award under Section 163-A is made during pendency of the petition under Section 166 of the Act, the Court can permit the claimant to withdraw the claim petition under Section 166 of the Act and the award under Section 163-A of the Act is to be considered as the final award.

8.3 In Guruanna Vadi & Anr. vs. The General Manager, KSRTC & Anr., AIR 2001 Karnataka 275 a Full Bench of the Karnataka High Court speaking through Hon'ble Mr Justice Ashok Bhan (as His Lordship then was) held that the claimant can move for amendment of his claim petition under Section 166 to that of a petition under Section 163-A at any stage of the proceedings. The Full Bench observed as under:-

"The only bar provided for exercising an option

in the matter of filing a claim petition for compensation is to be found in Section 163-B which states, 'where a person is entitled to claim compensation under Section 140 and Section 163-A, he shall file the claim under either of the said sections and not under both'. There is no prohibition in any other provision of the Act from switching over the claim made under Sections 166 to 163-A provided the accident took place on 14.11.1994 or thereafter because Section 163-A came on the statute book only with effect from 14.11.1994, subject of course, to the claimants satisfying other requirements such as the outer income limit mentioned in the Second Schedule. Section 163 is a beneficial legislation and provides for payment of compensation based on structured formula without requiring pleading or establishing that the death or permanent disability in respect of which the claim has been made was due to any wrongful act or negligence or default of the owner of the vehicle or vehicles concerned or any other person. Such a beneficial legislation has to be given a liberal interpretation. Therefore we answer this question in the affirmative by holding that a claimant can move the Court for amendment of his claim petition filed under Section 166 to that of a petition under Section 163-A at any stage of the proceedings and it would be for the concerned Court to pass an order on that application in accordance with law."

(emphasis supplied)

9. Coming to the second ground that once the claimant has filed an application under Section 140 of the Act he cannot file an application under Section 163-A of the Act, the same reasoning as applicable for negativing the first contention will apply here also. The object of introducing Section 163-B is to ensure that the claimant does not get compensation both under Section 140 and also under Section 163-A of the Act. Merely because he has filed an application under Section 140 of the Act on which no order is passed, the claimant cannot be prevented from withdrawing his claim under Section 140 and making a claim under Section 163-A of the Act. All that Section 163-B prevents is consideration of claim by the Tribunal under Section 140 of the Act as well as consideration of claim under Section 163-A of the Act because the claimant is to be awarded compensation either under Section 140 or under Section 163-A of the Act.

10. Similar controversy was raised in the following two decisions of this Court:-

10.1 In Oriental Insurance Co. Ltd. vs. Chintharbhai Sibabhai, 2003 (1) GLH 394, the claimants had filed petition under Section 166 and also an application under Section 140 on 11.4.1997. Before the Tribunal passed any order on application under Section 140 of the Act and during pendency of the application under Section 166 of the Act, the claimant filed application under Section 163-A of the Act on 12.7.2000. The Tribunal passed order dated 22.9.2000 allowing the application under Section 163-A of the Act. The said order came to be challenged. This Court turned down that challenge and observed that the application can be made at any stage of the proceedings.

10.2 In National Insurance Co. Ltd. vs. Mukeshbhai Bhalchandrabhai Jani, Deceased through heirs, (First Appeal Nos.937 and 2110 of 2001 decided on 25.9.2003 and 1.10.2003), the claimants filed a claim petition under Section 166 of the Act on 30.8.1996 claiming Rs.5 lakhs with interest thereon on account of death of Mukeshbhai in a motor vehicle accident. The claimants also filed an application under Section 140 of the Act for interim compensation. However, no order was passed on the said application and the application under Section 163-A came to be filed by the claimants on 23.8.2000 claiming Rs.4,53,000/-. By order dated 25.1.2001, the Tribunal granted the application under Section 163-A of the Act directing the opponents in the claim petition including the insurance company to pay compensation with interest thereon from the date of the claim petition till the date of deposit with proportionate costs. The insurance company challenged the said order in an appeal before this Court. During pendency of the appeal, in May 2003, the claimants filed a purshis before the Tribunal by exercising option stating that the amount awarded by the Tribunal be treated as the final award under Section 163-A of the Act as the claimants did not want to pursue the original application filed under Section 166 of the Act. The said application was filed in view of the decision of the Apex Court in Oriental Insurance Co. Ltd. vs. Hansrajbhai V. Kodala (supra) and the Tribunal granted the said application. That order came to be challenged in another appeal. By the above judgment, a Division Bench of this Court dismissed both appeals and held that the claimants were entitled to withdraw the original application under Section 166 of the Act and to pray for award under Section 163-A of the Act, notwithstanding pendency of the application under

Section 140 of the Act.

11. The learned counsel for the contesting respondents would, however, submit that Section 163-B clearly provides that the claimant can file the claim either under Section 140 or Section 163-A, but not under both. The learned counsel submits that the aforesaid provision was not dealt with in the earlier decisions. Though the submission prima-facie appears to be attractive, for the reasons stated hereafter, it need not be accepted.

12. In CB Gautam vs. Union of India, JT 1992 (6) SC 678, the Hon'ble Supreme Court quoted with approval the observations made by Learned Hand of the United States of America that ".....it is true that the words used, even in their literal sense, are the primary and ordinarily the most reliable source of interpreting the meaning of any writing : be it a statute, a contract or anything else. But it is one of the surest indexes of a mature and developed jurisprudence not to make a fortress out of the dictionary : but to remember that statutes always have some purpose or object to accomplish, whose sympathetic and imaginative discovery is the surest guide to their meaning."

Again in Ahmedabad Municipal Corporation vs. NR Thakore, 2000(1) GLH 388, the Apex Court quoted with approval the following observations made by Lord Denning in the case of Seaford Court Estates Ltd. vs. Asher (1994 1 All ER 155) :-

> "When a defect appears a judge cannot simply fold his hand and blame the draftsman. He must set to work on the constructive task of finding the intention of Parliament and then he must supplement the written words so as to give `force and life' to the intention of the Legislature. A judge should ask himself the question how, if the makers of the Act had themselves come across this ruck in the texture of it, they would have straightened it out ? He must then do as they would have done. A judge must not alter the material of which the Act is woven, but he can and should iron out the creases."

In the above case, the Court was concerned with Rule 7 of the Rules for Admissions to Smt. NHL Municipal Medical College restricting the eligibility to "local students" and defining "a local student" as under :-

"'Local student' means a student who had passed SSC/new SSC examination and the qualifying examination from any of the High Schools or Colleges situated within the Ahmedabad Municipal limits."

After considering the object of the Rules and grievances raised by residents of Ahmedabad studying in schools outside Municipal limits, the Apex Court read the above Rule as under :-

"Local student means a student who had passed HSC/New SSC examination and the qualifying examination from any of the High Schools or Colleges situated within the Ahmedabad Municipal Corporation limits and includes a permanent resident student of Ahmedabad Municipality who acquires the above qualifications from any of the High School or College situated within Ahmedabad Urban Development Area."

13. In view of the aforesaid principles laid down by the Apex Court and looking to the object of introducing Section 163-A and the non-obstante clause with which sub-section (1) of Section 163-A commences, this Court is inclined to read Section 163-B as under :-

"163-B. Where a person is entitled to be awarded compensation under Section 140 and Section 163-A, he shall be awarded compensation under either of the said Sections and not under both."

The matter can be examined from another angle. There is no provision disabling the claimant from praying for amendment of his claim petition filed under Section 166 of the Act nor from praying for withdrawal of his application under Section 140 of the Act.

Sub-section (3) of Section 166 as originally enacted contained a time limit of six months from the date of occurrence of the accident within which the application for compensation was required to be filed with liberty granted to the Tribunal to condone the delay upto 12 months from the date of occurrence of the accident. Sub-section (3) has been omitted by Act No.54 of 1994 (with effect from 14.11.1994) which is the same enactment by which Section 163-A has been inserted. In view of the said omission, it is open to the claimant to contend that instead of withdrawing the application under Section 166 or withdrawing the application under Section 140 of the Act and thereafter making a fresh application

under Section 163-A, for which there would be no period of limitation, the claimant is now making an application for amendment of the claim petition for invoking the powers of the Tribunal under Section 163-A of the Act and not the powers under Section 140 or Sections 166/168 of the Act. Hence in absence of any period of limitation, there could be no objection to the claimant making an application under Section 163-A of the Act even after making an application under Section 140 of the Act, if the accident took place on or after 14.11.1994, the structured formula compensation is claimed on the basis of income of the injured/deceased upto Rs.40,000/- per annum and so long as no order is passed on an application under Section 140 of the Act. In fact, the prayer for amendment of the petition to claim compensation under Section 163-A of the Act during pendency of the application under Section 140 of the Act will amount to and will have to be treated as a prayer for withdrawal of application under Section 140 of the Act.

14. In view of the above discussion, it is more than clear that the provisions of Section 163-A are inserted with effect from 14.11.1994 in order to give earliest relief to the victims of the motor vehicle accidents. The object of Section 163-A and the Second Schedule is to avoid long-drawn litigation and to avoid delay in payment of compensation to the victim or his heirs who needs urgent relief and, therefore, the Courts have been permitting the claimants to make application under Section 163-A of the Act at any stage of the proceedings, so long as no order is passed on the application under Section 140 of the Act.

15. In the facts of the instant case, the petitioner filed the claim petition under Sections 140, 166 and 170 of the Act. Within a few months thereafter, the petitioner filed an application praying that the main petition under Section 166 be treated as a petition under Section 163-A of the Act instead of a petition under Sections 140, 166 and 170 of the Act. The claimant also pointed out that no orders were passed either on the original claim petition or on the application under Section 140. Admittedly no orders were passed by the Tribunal on the application under Section 140 of the Act and, therefore, there was no prohibition against the Tribunal entertaining the petitioner's application for converting the claim petition under Section 166 of the Act into an application under Section 163-A of the Act. The prayer for such amendment or conversion has to be treated as the prayer for withdrawal of the application under Section 140 of the Act.

16. As regards the last reason given by the Tribunal for rejecting application Exh.9, it is surprising that the Tribunal should have any objection against expeditious disposal of a claim application under Section 163-A of the Act. Since the very purpose of introducing Section 163-A of the Act is to give expeditious relief which is made possible by avoiding several contentious issues and, therefore, the provision saves valuable time of the Tribunal besides giving immediate relief to the victims, the Motor Accident Claims Tribunal is expected to encourage, rather than discourage, filing of applications under Section 163-A of the Act and to consider and decide the same with utmost expedition. Of course, there may be several other claim petitions under Section 166 of the Act waiting for decision but that cannot be a ground for not considering the applications under Section 163-A of the Act.

If the Tribunal was labouring under the impression that a prayer for amendment of the petition was for the purpose of jumping the long que of claimants, the impression is thoroughly misconceived. The prayer was only for permission to leave the slow moving que and to join the fast moving que. Those who are prepared to accept lumpsum compensation on the basis of a structured formula are giving up their right to claim higher compensation after a long wait and are instead opting for immediate compensation. Such applications for conversion of claim petitions under Section 166 of the Act into applications under Section 163-A of the Act, therefore deserve to be considered without any such prejudice betrayed by the Tribunal in the instant case. Once it is found that the accident in question took place on or after 14.11.1994 and that no order is passed by the Tribunal for awarding compensation under Section 140 of the Act, the Tribunal is bound to consider the claimant's application for compensation under Section 163-A of the Act which, when taken up for consideration, will necessarily have the effect of his giving up the claim in the application/s under Section 166 and/or under Section 140 of the Act or his application under Section 166 may be permitted to be converted into an application for compensation under Section 163-A of the Act. The Court would like to add that even where the claimant has in his application under Section 166 of the Act claimed compensation on "fault principle" on the basis of the income of the injured/deceased at more than Rs.40,000/per annum, it is open to the claimant to claim structured formula compensation under Section 163-A of the Act by restricting his claim on the basis of income upto

Rs.40,000/- p.a. or whatever may be the upper income limit in the Second Schedule as may be in force on the date of the accident.

17. For the reasons aforesaid, the petition is allowed. The impugned order dated 10.4.2003 at Annexure "B" to the petition is hereby quashed and set aside and the petitioner's application Exh. 9 in Motor Accident Claim Petition No.32 of 2003 (Annexure "A" to this petition) is hereby allowed. The Tribunal shall proceed to hear and decide the petitioner's claim application under Section 163-A of the Motor Vehicles Act as expeditiously as possible and in accordance with law.

Rule is made absolute.

18. The Registry is directed to circulate a copy of this judgment to all the Motor Accident Claim Tribunals in the State.

(M.S. SHAH, J.)

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